IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

C.R.No.217 of 2007 (O&M)
DATE OF ORDER: 19.1.2007

M/s Yogesh Tractors etc

...Petitioner(s)

Versus

M/s Eshma Tractors

....Respondent(s)

CORUM : HON'BLE MR. JUSTICE M.M. AGGARWAL

.*.*.*.

Present: Mr. R.K. Gupta, Advocate.
Mr. Amit Kumar Jain, Advocate.

M.M. AGGARWAL,J

The facts of the case are that plaintiff, now respondent had filed a suit for permanent injunction restraining defendant No.1, now petitioner in any way from taking the delivery of tractors from any other dealer or stockiest unless and until defendant No.1 clears the account of the plaintiff;

b) Further restraining defendant No.3 in any way starting dealing directly with defendant No.1 until and unless defendant No.1 clears the account of the plaintiff i.e the cheque amount and interest thereon;

c) Further restraining defendant No.1 not to breach the agreement dated 24.1.2002 executed between the plaintiff and defendant No.1;

d) Further restraining defendant No.2 from in any way making the payment under channel financing to defendant No.3, for tractor supplies to defendant No.1, unless and until defendant No.1 clears the account of the plaintiff i.e the Cheque amount and interest thereon;

e) And for mandatory injunction directing defendants No.1 and 3 to obey the terms and conditions of agreement dated 24.1.2002 unless and until defendant No.1 clears the account of the plaintiff i.e Cheque amount at interest thereon i.e payment in total due.

In this case, petitioner is defendant No.1 whereas defendant No.2 was State Bank of India and defendant No.3 is International Tractor Limited, which are manufacturer of Sonalika Tractors.

In that suit, an application under Order 39 Rule 1 & 2 CPC was filed, which was dismissed by the trial Court. On an appeal having been filed, same was allowed by Additional District Judge vide impugned judgment dated 9.1.2007. Vide that judgment, defendant No.1 i.e present petitioner was restrained from taking the delivery of Tractors from defendant No.3 or other stockists directly unless the entire disputed amount of Rs.3,47,418/- with interest @ 18% per annum as given in the schedule with effect from the date of undertaking i.e 24.1.2002 was paid to the plaintiff. A direction to defendant No.3 was also issued to obey this order being mediator of the plaintiff and defendant No.1.

On behalf of the petitioner, it is argued that if there was any amount due to the plaintiff then suit for recovery should only be filed. Present suit was barred under Section 41 Clause (h) of the Specific Relief

Act.

On behalf of the respondent, it is argued that the petitioner had given an undertaking dated 24.1.2002 and was bound by that undertaking and that suit shall be maintainable under Section 42 of the Specific Relief Act. It is argued that in this case, there was breach of trust and as such Section 41 Clause (h) of the Specific Relief Act was not applicable. Counsel for the respondent argued that the undertaking dated 24.1.2002 is enforceable.

Counsel for the plaintiff, now respondent relies on a judgment reported in M/s Gujarat Bottling Co Ltd v. Coca Colla Company, AIR 1995 SC 2372.

Counsel for the petitioner relies on judgments of this Court reported in State of Haryana v. Dr. Prem Singh Mann, Punjab Law Reporter, Vol CXIV (1996-3), 799 and M/s HMM Coaches Ltd v. M/s Jaycee Coach Builders Limited and others, Punjab Law Reporter, Vol CXXVII (2001), 729 and argues that so called undertaking dated 24.1.2002 was not given by the petitioner-defendant No.1. It is forged document and even otherwise it is not a contract and no order could be passed on this undertaking.

From the order of the First Appellate Court, it would come out as if suit for recovery of Rs.3,47,418/- has been decreed by that Court with interest from the date of undertaking dated 24.1.2002.

Here is a case, where plaintiff-respondent No.1 and petitioner, who was defendant No.1 in this case, were dealing in Tractors being manufactured by defendant No.3 and therefore they were doing trade and business in tractors. Merely because some letter dated 24.1.2002, which

may be in the form of undertaking is there and some amounts may be due, defendant No.1 i.e petitioner could not be restrained from doing his business. Some ascertainable sum may be due if accounts are settled. Injunction can be issued only when there is irreparable loss which cannot be compensated in terms of money but in this case, there is ascertainable amount. In such matters, injunction should not have been granted.

Under these circumstances, this petition is accepted. Order dated 9.1.2007 passed by Additional District Judge, Jind is set aside.

January 19, 2007 (M.M. AGGARWAL)
manoj JUDGE